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EXAMINER

DOUGHERTY, ANTHONY T

ART UNIT PAPER NUMBER

2863

DATE MAILED: 05/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/865,948

Applicant(s)

HAPGOOD ET AL.

Examiner

Anthony T. Dougherty

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☒ Claim(s) 12-14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 May 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: Reference Numeral 10 is referred to Figure 1 in the specification numerous times but there is no reference numeral 10 in Figure 1; reference numeral 50 is referred to Figure 2 in the specification on line 2 of paragraph 20 on page 6 but reference numeral 50 does not appear in Figure 2. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

2. Claims 12-14 objected to because of the following informalities: Claim 12 depends from claim 9, both claim 9 and claim 12 recite a limitation of the weight of a horse being estimated based on an equation, the equations of claim 9 and claim 12 differ, since the equations are different it is unclear which equation claims 12-14 are seeking to claim, because the two equations are different there is a combination of the same inputs that result in the two equations giving different values for the estimated weight making the equations mutually exclusive and thus they cannot both be used to determine the estimated weight, it is believed that this is a typographical error and claim 12 should depend from claim 8 and thus claims 12-14 have been treated throughout the rest of this action as if claim 12 did depend from claim 8. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 8, 15, 22, 29, 34, 39, and 44 rejected under 35 U.S.C. 102(b) as being anticipated by “Body condition scoring and weight estimation of horses”; C.L. Carrol and P.J. Huntington; Equine Veterinary Journal, Equine vet.J. (1998) (1) ; PGS. 41-45 (herein referred to as Carrol et al.).

With regard to claims 1, 8, 15, and 22 Carrol et al. discloses a method for estimating the weight of a horse (see page 44 Table 2 line 7), by measuring a girth (see page 41 column 2 line 6 through line 10), a length (see page 41 column 2 line 7 through line 8), and a height of the horse (see page 41 line 2 through line 4), and determining an estimated weight of the horse based on the girth, the length and the height of the horse (see page 42 column 2 line 4 through line 9 and Table 2 which shows how accurate girth x length x height is for determining the weight of a horse). Furthermore it is inherent that Carrol et al. used a computer medium with storage and output means for calculations and output (see Figures 1-3 and Tables 1-4).

With regard to claims 29, 34, 39, and 44, Carrol et al. discloses a method for estimating the weight of a horse (see page 44 Table 2 line 6), by measuring a girth (see page 41 column 2 line 6 through line 10), and a height of the horse (see page 41 line 2 through line 4), and determining an estimated weight of the horse based on the girth and the height of the horse (see

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page 42 column 2 line 4 through line 9 and Table 2 which shows how accurate girth x height is for determining the weight of a horse). Furthermore it is inherent that Carrol et al. used a computer medium with storage and output means for calculations and output (see Figures 1-3 and Tables 1-4).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-7, 9-14, 16-21, 23-28, 30-33, 35-38, 40-43, and 45-48 rejected under 35 U.S.C. 103(a) as being unpatentable over “Body condition scoring and weight estimation of horses”; C.L. Carrol and P.J. Huntington; Equine Veterinary Journal, Equine vet.J. (1998) (1) ; PGS. 41-45 (herein referred to as Carrol et al.) as applied to claims 1, 8, 15, 22, 29, 34, 39, and 44 above, and further in view of Eric W. Weisstein’s world of mathematics at <http://mathworld.wolfram.com/> © 1999.

With regard to claims 2-7, 9-14, 16-21, and 23-28 the primary reference to Carrol et al. discloses estimating the weight of a horse (see page 44 Table 2 line 7), by measuring a girth (see page 41 column 2 line 6 through line 10), a length (see page 41 column 2 line 7 through line 8), and a height of the horse (see page 41 line 2 through line 4), and determining an estimated weight of the horse based on the girth, the length and the height of the horse (see page 42 column

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2 line 4 through line 9 and Table 2 which shows how accurate girth x length x height is for determining the weight of a horse). Furthermore it is inherent that Carrol et al. used a computer medium with storage and output means for calculations and output (see Figures 1-3 and Tables 1-4). However, Carrol et al. fails to disclose estimating the weight of a horse based on a linear regression of height, length and girth.

The secondary reference to Weisstein discloses linear regression is a method for fitting a curve (not necessarily a straight line) through a set of points using some goodness-of-fit criterion (see <http://mathworld.wolfram.com/Regression.html> and <http://mathworld.wolfram.com/LinearRegression.html> and <http://mathworld.wolfram.com/LeastSquaresFitting.html>).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used linear regression to estimate the weight of a horse.

Accordingly, such a modification would have been obvious since linear regression can provide the best possible solution to a relationship between variables (see <http://mathworld.wolfram.com/LeastSquaresFitting.html>) such as length, height, and girth, thereby suggesting the obviousness of the modification.

With regard to claims 30-33, 35-38, 40-43, and 45-48 the primary reference to Carrol et al. discloses a method for estimating the weight of a horse (see page 44 Table 2 line 6), by measuring a girth (see page 41 column 2 line 6 through line 10), and a height of the horse (see page 41 line 2 through line 4), and determining an estimated weight of the horse based on the girth and the height of the horse (see page 42 column 2 line 4 through line 9 and Table 2 which

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shows how accurate girth x height is for determining the weight of a horse). Furthermore it is inherent that Carrol et al. used a computer medium with storage and output means for calculations and output (see Figures 1-3 and Tables 1-4). However, Carrol et al. fails to disclose estimating the weight of a horse based on a linear regression of girth and height.

The secondary reference to Weisstein discloses linear regression is a method for fitting a curve (not necessarily a straight line) through a set of points using some goodness-of-fit criterion (see <http://mathworld.wolfram.com/Regression.html> and <http://mathworld.wolfram.com/LinearRegression.html> and <http://mathworld.wolfram.com/LeastSquaresFitting.html>).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used linear regression to estimate the weight of a horse.

Accordingly, such a modification would have been obvious since linear regression can provide the best possible solution to a relationship between variables (see <http://mathworld.wolfram.com/LeastSquaresFitting.html>) such as height and girth, thereby suggesting the obviousness of the modification.

### *Conclusion*

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Japanese Patent No. JP 2002262714 A to Mihsashi et al. because it discloses estimating the weight of an animal by measuring the heart girth (see English abstract).

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U.S. Patent No. 6,314,654 to Morissette because it teaches estimating the weight of an animal based on a physical measurement of the animals rib cage.

U.S. Patent No. 4,688,653 to Ruble because it teaches estimating an animals weight based on a physical measurement of the hoof size.

U.S. Patent No. 4,745,472 to Hayes because it teaches determining properties of animals based on measured lengths and heights.

“Accuracy of different methods of estimating the weight of horses”; J.M. Ellis, T. Hollands; The Veterinary Record, 09/19/1998; pgs. 335-336 because it teaches using software to estimate the weight of a horse based on the girth and the length.

“Horse Owner’s Veterinary Handbook”; Second Edition, Copyright 1989; James M. Giffin, M.D. and Tom Gore, DVM; pgs. 458 – 460 because it teaches estimating a horses weight based on either girth or height.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony T. Dougherty whose telephone number is (703) 305-4020. The examiner can normally be reached on Monday through Friday from 8 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Barlow can be reached on (703) 308-3126. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 305-3431 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

*ATD*

atd  
April 18, 2003

*John Barlow*  
John Barlow  
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